



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. B. Allred
County Auditor
Baylor County
~~Wichita Falls, Texas~~
Seymour, Texas
Dear Sir:

Opinion No. 0-1891

Re: Can the commissioners' court allow the county clerk expenses for postage and extra help when such expenses represent an accumulation over a nine year period?

Your request for an opinion of this department on the above stated question has been received.

We quote from your letter as follows:

"The Commissioners' Court of Baylor County has asked me, as their County Auditor, to get a ruling from you relative to payment of expenses of their county clerk over a period running back as far as nine years for extra help and postage. It is my understanding that this officer's fees are supposed to cover any extra help he uses in his office, as well as the expense for postage. During the time I have been county auditor in Baylor County, which is only part time work, since the county is not large enough to require full time, the county has paid this officer ex-officio in an amount for county and district clerk averaging around \$1,400.00 per year, and it seems that these expenses should have been taken care of by the officer from these payments. Also, in view of the fact that the officer is expected to make an expense statement monthly to the court, which he has done and in which he has not claimed these expenses, it is my belief that he is not entitled to claim them at this late date.

"I would like to have your opinion on this

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matter for the full period or any part of the nine year period."

Article 3899, Vernon's Annotated Civil Statutes, reads in part as follows:

"(a) At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, purchase equipment for a bureau of criminal identification such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show

any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees earned by such officer. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of his official duties, which, if purchased by the County, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be and remain the property of the county. The expense of maintenance, depreciation and operation of such automobiles as may be allowed, whether purchased by the county or owned by the Sheriff or his Deputies personally, shall be paid for by the Sheriff and the amount thereof shall be reported by the sheriff, on the report above mentioned, in the same manner as herein provided for other expenses."

The Commissioners' court is a creature of the State Constitution, and in the exercise of its functions, the court's power, authority and duties are strictly limited to those expressly or impliedly conferred upon it by the Constitution and the laws of this state. Acts outside of these definite bounds are null and void. (Mills County vs. Lampasas County, 40 S. W. 403; Commissioners' Court of Madison County vs. Wallis, 15 S. W. (2d) 538; Satsfield v. Sheppard, 39 S. W. (2d) 1111; Von Rosenberg vs. Lovett, 173 S. W. 508; Miller vs. Brown, 216 S. W. 452; Texas Juris. Vol. 11, pp. 563-4-5).

Consequently, from the proposition and authorities cited above, before the commissioners court in the situation now confronting us can legally pay the county clerk money representing expenses of that office over a nine year period, there must be some expressed or implied authority found in the Constitution or the laws of this State conferring that right or justifying that action.

The county officials of Baylor County are compensated on a fee basis. Article 3899, supra, regarding the expenses of county officials, with few exceptions, has been

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in the same form during the nine year period we now have under consideration. This statute has always allowed the expenses enumerated therein for county officials compensated on a fee basis, incurred by them in the conduct of their offices. However, these expenses were never paid by the county, but the amount of such expenses, together with the amount of salaries paid to assistants, deputies and clerks were to be paid out of the fees earned by such officer. Under the old statute (3899, 3897) such expenses and salaries were to be paid out of the excess fees earned by such officer. Now, under the present statute, such expenses and salaries are to be paid out of the fees earned by such officer. Said officer can legally deduct the salaries of his assistants and deputies and the authorized expenses under Article 3899, supra, in arriving at his maximum compensation.

The county has paid the county clerk ex-officio compensation in the approximate sum of \$1400.00 per year during the above mentioned nine year period. The commissioners' court is debarred from allowing compensation for ex officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided by law. As above stated, county officials who are compensated on a fee basis must pay their expenses out of fees earned by their respective offices, and the commissioners' court is without authority to allow payment of the same by the county.

You are respectfully advised that it is the opinion of this department that the above mentioned expenses of the county clerk should have been paid by him from fees of office and the county has no authority to pay such expenses.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed)

Ardell Williams
Assistant

AW:JM

Approved April 20, 1940.

Grover Sellers, First Assistant
Attorney General

Approved: Opinion Committee by BWB - Chairman